

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 ) MB Docket No. 05-  
311  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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**REPLY COMMENTS OF CITY OF PHILADELPHIA**

These Reply Comments are submitted by the City of Philadelphia, Pennsylvania (“Philadelphia” or “City”) in support of the Comments and Reply Comments filed by the National Association of Telecommunications Officers and Advisors (“NATOA”). As stated in our initial Comments filed on February 13, 2006, Philadelphia believes that local government franchising is the best mechanism to ensure effective competition among incumbents and new entrants, and reasonable service standards for consumers of video services. The franchise process has been established in Philadelphia for more than two decades, and continues to meet the needs and interests of the local community. Philadelphia welcomes competitors in the video programming and telecommunications market, and has never denied any provider the opportunity to serve our community. Our citizens rely, however, on the City’s insistence on fair treatment for subscribers and even-handed treatment for all service providers.<sup>1</sup>

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<sup>1</sup> Verizon’s Comments cite the alleged experience of RCN Corporation in seeking a Philadelphia video franchise in 2001 as support for its claim that local franchising impedes competition. The Declaration of Thomas W. Hazlett submitted in support of Verizon’s opening Comments incorrectly suggests that the City blocked RCN’s effort to secure a video franchise in Philadelphia (*see* Note 11 and ¶ 42). The facts are quite different. The City’s Cable Office encouraged the RCN franchise application; the ordinance introduced in City Council to approve the franchise was supported by the Mayor’s Office; and the Cable Office testified in support of the franchise at Council hearings. To the City’s regret, RCN withdrew its franchise application before Council’s vote. Notwithstanding Mr. Hazlett’s indication that City delay was the reason, it should be noted that RCN withdrew at a time when it was undergoing financial retrenchment, like much of the telecommunications industry, and was cutting back its plans for build-out in a number of metropolitan areas.

Verizon and AT&T, as potential new entrants, asserted in their opening Comments in this proceeding, and have repeatedly asserted in the media, that unwarranted delays are caused by local franchising authorities (“LFAs”), and that this is a barrier to their launch of video services and deters competition. A review of the facts indicates that these companies themselves are the source of their late entry into the video marketplace. For the past decade, the incumbent telecommunications companies have had the option of investing in the broadband infrastructure that would let them provide video programming to compete with incumbent cable operators, but have almost uniformly chosen to put their resources elsewhere. Now they are anxious to “get into the game” and are seeking special treatment, including exemption from equitable build-out requirements and other local policies that ensure access by residents of all income levels and fair competition between incumbents and new entrants. If the massive resources dedicated to changing the law and regulation in their favor were instead deployed to work with LFAs to develop new franchises, we would all be closer to the day when all Philadelphia residents will have a genuine choice of video providers.

Philadelphia is more than ready to start, and timely conclude, the franchising process here. My colleagues and I recently met with Verizon representatives to discuss Verizon’s plans for network expansion and cable service in Philadelphia. We strongly encouraged Verizon to negotiate its franchise agreement with the City now, in preparation for the time when its network is ready for cable service – an offer we have extended to Verizon multiple times over the last six months. As of this submission, Verizon has not accepted the invitation. It is clear from the opening Comments of other LFAs that our experience is not unique. Where Verizon declines even to come to the table, its claim that delay by LFAs is slowing or preventing its entry into the video services market is untenable.

Philadelphia is not subject to a rigid “level playing field” statute at the state or local level, but our belief and our policy is that all franchise agreements should provide for an equitable distribution of services and obligations among all operators, incumbent and new entrant. Where the operator, not the consumer, controls video content, the regulatory regime should be competitively neutral, especially with respect to PEG, customer service, and the obligation to build-out the video system in a manner that does not discriminate against economically disadvantaged residents and neighborhoods. As to build-out obligations, Title VI of the Communications Act expressly requires the LFA to “assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.” 47 U.S.C. § 541(a)(3). Discrimination in favor of new entrants on build-out obligations is inconsistent with Title VI and invites discrimination against low-income subscribers by denying them the benefits of competition. Giving one provider a regulatory advantage does not encourage genuine competition. The uneven

financial burden that inevitably results will over time lessen, not increase, competition for many communities by driving out the disadvantaged operators.

Cable operators should be required to consider and reflect local and community concerns. Cable systems, by their nature, are intended to be local entities that involve and contribute to the communities they serve. This clearly was Congress' intent in granting localities the authority to require franchises. A national "one size fits all" method of franchising cannot meet the needs of local communities and local subscribers. Under federal law, the FCC's proper role in the local franchise process is to implement the laws enacted by Congress, or to advise and recommend policy changes to Congress. Its role is not to impose rules that would alter the framework Congress has set in place without the checks and balances of the legislative process.

The regulation of video services under Title VI relies on a dualism, deliberately structured by Congress, where state and local authorities have primary responsibility for administering the franchising process, but within limits established by federal law. Because the needs, interests, and culture of each community are specific to that community, this dual framework recognizes the unique position of the LFA to ensure providers meet community needs in a fair and equitable manner, and to enforce provider obligations to do so effectively. The Commission has neither the resources nor the expertise to regulate such essentially local matters. The likely effect of a national franchise enforced by the Commission will be no regulation at all, and a video services industry that is free to ignore the concerns and the legitimate interests of our citizens.

Competition in the video services market is an important goal and one that Philadelphia fully supports, but it was not Congress' only goal in Title VI. By granting LFAs the authority to regulate through the franchising process, Congress recognized that communities must retain supervision of their rights-of-way use and recover the associated costs, are entitled to the payment of a reasonable franchise fee, and must be able to require sufficient outlets for local expression through PEG channels and appropriate institutional network obligations. The call for a process facilitating swift entry must not result in a blank check for would-be competitors. Franchising authorities must retain the authority to ensure that similar (though not necessarily identical) responsibilities be accepted by any would-be franchisee, so that consumers throughout our communities can enjoy the benefits of competition on a non-discriminatory basis.

## **Conclusion**

The local cable franchising process works in Philadelphia. The specific interests and needs of our local community are met, and local subscribers are protected. Video providers are assured of even-handed treatment. Local franchises

enable local governments to oversee the video services industry in the public interest, and to ensure compliance with law. The FCC should leave the franchise process to the local authorities.

Respectfully submitted,

City of Philadelphia

By: Joseph James, Deputy Commissioner  
Department of Public Property  
City Hall, Room 732  
Philadelphia, PA 19107

cc: NATOA, [info@natoa.org](mailto:info@natoa.org)  
John Norton, [John.Norton@fcc.gov](mailto:John.Norton@fcc.gov)  
Natalie Roisman, [Natalie.Roisman@fcc.gov](mailto:Natalie.Roisman@fcc.gov)